THE

DEFENCE

OF

NUNDAKUMAR.

A REPLY TO SIR JAMES STEPHEN'S BOOK.

"হাতী পর হাওদা ঘোড়ে পর জীন,
জল দি যাও জল দি যাও ওয়ারেণ হেষ্টীং"

BY

KESHUB CHANDRA ACHARYA.

PLEADER, MYMENSINGH.

CALCUTTA,

PRINTED & PUBLISHED BY WOOMA CHURN CHACRAVARTI,
AT THE
SADHARAN PRESS, NO. 51, MIRZAPORE STREET.

MARCH, 1880.

Price 8 Annas.

PREFACE.

"রে পাপিষ্ঠ রাজা রায় দুর্ব্বৃত্ত দুর্ব্বল,
বাঙালী কুলের গ্লানি, বিশ্বাসঘাতক;
ডুবিলি ডুবালি পাপী কি করিলি বল,
তোর পাপে বাঙালীর ঘটিবে নরক;
যে পাপে ডুবিলি আজি ওরে দুরাচার!
নন্দকুমারের রক্তে হইবে বিধান
উপযুক্ত প্রায়শ্চিত্ত, কি বলিব আর,
প্রতিদিন বঙ্গবাসী পাবে প্রতিদান;
প্রতিদিন বাঙালীর শত মনস্তাপ,
প্রতি মনস্তাপে তোরে দিবে শত শাপ।"

—পলাসির যুদ্ধ।

THE Sympathy which every Hindoo feels for Nundakumar, is a sufficient excuse for me for taking up his brief at this distance of time; specially when we find that one of the eminent English Jurists of the 19th centuy, instead of allowing that unfortunate man a quiet repose in death, has attemped to resuscitate him for the purpose of blackening him still further; and has with that view spared no amount of labour in picking up every minute fact against him with the zeal and dexterity of a special pleader. It becomes therefore the sacred duty of every Hindoo to take up the cause of that unfortunate man, who in attempting to expose the revenue administration of Bengal, with the ulterior object of obtaining some leading position in the service of the East India Company, fell a victim to the combined animosity and wrath of the influential officials and non-officials of Calcutta and other adjoining places.

It must be admitted by all, that after this lapse of time it is almost impossible to discuss minutely every surrounding point of the case. But I may venture to say, that the facts furnished by Sir James Stephen are in themselves quite sufficient to raise strong presumption of Nundakumar's innocence. And it is sad to find that English Judges should entirely have ignored the dictum of the English law, that the accused should always

have the benifit of the doubt. I shall therefore try from the broad facts of the case, as stated by Sir James Stephen himself to show, that the prosecution was supported by very weak evidence, quite insufficient to make out even a primafacie case, and that it arose out of circumstances which rendered the theory of the prosecution extremely improbable. And this much I shall be able to show also, that no Judges or Jury free from prejudice could have convicted Nundakumar on such slender evidence.

As to the question whether Impey deleberately murdered Nundakumar or not ; I leave my readers to draw their own inferences from the facts of the case.

The essay on Nundakumar so ably written by Mr. Beveridge, which appeared in the January number of the Calcutta review 1886. came to my hands when I had nearly completed my Pamphlet. Had I received it earlier, I venture to say, I might have with my native instinct and experience used it with very great advantage in defending that unfortunate man, to whom every English man caring for the good name of his country and the natives in general, ought to be grateful for the part he had taken in boldly exposing the revenue administration of Bengal.

On perusing the literature of this notorious case, I am really at a loss to make out, why most of the writers impute greater amount of blame to Impey than Hastings ; if we accept that, Impey had deleberately murdered Nundakumar, still Warren Hastings be the principal abettor and as such legally liable to the same punishment. On the other hand if we believe that, Hastings had taken advantage of the friendship of Impey and of his own position to work upon him to believe any story against Nundakumar ; the offence of Hastings then becomes one of deeper dye.

With these preliminary observations, I now proceed to state the facts of the case as I find them stated in Sir James Stephen's book.

Sir James Stephen's book has been reffered to, simply as Vol. I. and Vol. II.

THE

DEFENCE

OF

NUNDAKUMAR.

THE facts out of which this notorious prosecution was got up were as follow:—

One Bullaky Dass a native Banker at Calcutta finding himself, in 1769, in bad state of health wound up his affairs. He recommended to Maharajah Nundakumar, his wife, his daughter, and Pudma Mohun Dass an intimate friend. He made a will dated June 12th, 1769, and appointed Ganga Bissen and Hingu Lall his trustees, leaving to Pudma Mohun Dass a quarter of his property, and the management of his business. Before making his will, he gave a power of attorney (which is referred to in the will) to Pudma Mohun Dass and Mohun Prosad, who was afterwards the prosecutor of Nundakumar. After the death of Bullaky Dass probate of his will was granted to Gunga Bissen in the Mayors Court at Calcutta on the 8th September 1769, and about five months after the death of Bullaky Dass, Nunda Coomar, Gunga Bissen and Pudma Mohun Dass went to Belvedere to get certain bonds of East India Company, belonging to late Bullaky Dass. They obtained them and took them to the widow of the said Bullaky Dass, who said that Nundakumar had been the means of obtaining them for her and had been very generous to her, that she

would settle accounts with him first. A few days after this Mohun Prosad went to Nunda Coomar's house to settle accounts between Nundakumar and Bullaky Dass. The result of it was that eight of the Company's bonds for amount not stated were delivered to Nunda Coomar's agent, Chytanya Nath, after being endorsed by Bullaky Dass's agent, Kissen Jaun Dass. Nunda Coomor in exchange for these gave Pudma Mohun Dass (who had four annas interest in the property of Bullaky Dass), a Nagree bond for rupees ten thousand, also the Pattah of the house, also three Persian papers, the bond and Persian papers being cancelled by tearing them at the top. One of these documents was the bond alleged to be forged.

'All these transactions took place in 1766. Pudma Mohun Dass who had four annas interest in every property of Bullaky Dass quietly received back a forged bond of Bullaky in lieu of Company's bonds which were endorsed by another agent Kissenjan Dass. Mohun Prosad himself settled accounts, although entertained doubts as to the genuineness of the bond, he allowed Pudma Mohun Dass to receive this forged bond and give in exchange for that Rupees 69 630 in bonds of the English Company. Mohun Prosad in answer to the question, "tell at what time you suspectd forgery of the bond", answered "Moharajah mentioned to me the bond and then I suspected"—Trial of Nundo Coomar, page 97. After the payment of this bond and other creditors, only sixty thousand rupees were left for the widow of Bullaky Dass; why Mohun Prosad did not tell Pudma Mohun and Kissenjan Dass not to pay this forged bond? The amount was not small, why this large amount was without any protest given to Nundo Coomar, and mention of this forgery was for the first time made in 1774, by an amended bill of complaint, and this was done when Nundocoomar demanded for a minute explanation of this claim as to render the case clear to him; I think these facts were alone sufficient to throw away the indictment as extremely improbable.

The criminal proceedings arose out of a civil suit pending in the Mayors court, without the sanction of the said court, and before the adjudication of the question by that Court. Gunga Bhissen claimed against Nundocoomar Rupees 129630-7 annas stated to be due to the estate of late Ballaky Dass, for company's bond; Mohun Prosad was attorny for Gunga Bhissen, Nundocoomar set up an account said to be adjusted between himself and the representative of Bullaky Doss, showing a small balance in his favour. The plaintiff asked for an arbitration and the court also considering the case very intricate depending materially on accounts in Nagree, ordered to refer the matter to arbitration, as requested by the plaintiff. At this stage of the case, the Supreme Court of Judicature (Oct 19 1774) arrived in Bengal, and Mr. Driver commenced preparations for instituting criminal proceedings. When these criminal proceedings were instituted is not clear, but this much can be seen that the proceedings were not instituted till 24. March. 1775, so it will be seen that after the payment of the forged bond for Rs69630-7 annas Gunga Bissen and Mohun Prosad did not think of instituting the criminal proceedings till after the expiration of nearly seven years. I should like to know what satisfactory account for this long delay can be given? Mohun Prosad himself had the management of the business, since Kartic 1825 Nagree year, about four years before the institution of the criminal proceedings (See Trial of Nundo Coomar page 96)

The second important point is the absence of Gunga Bissen. The reason assigned for not producing Gunga Bissen in court, is apparently sound but he might have been examined by commission, although he was ill yet he could give his evidence in his own house, and might have been brought also in a khat in Court. It appears to be a matter of great surprise that the Court allowed the prosecution at the instance of Mohan Prosad, and Ganga Bissen, who instituted the civil proceedings out of which the Criminal proceedings arose, was allowed to be kept back; why Gunga Bissen did not take upon himself the responsibility of

prosecuting Maharajah Nundokumar, does not appear at all to be clear. Now in the face of these improbabilities Nundo Coomar was convicted and hanged ! ! ! and yet Sir James Stephen asks the public, to believe that the trial was fair. Of course there was nothing very unfair in the procedure of the Court. Now let me proceed to examine the witnesses produced on behalf of the prosecution. The bond alleged to have been forged was witnessed, by Mathub Roy, Selabat and Abdoob Cam il Mohamed, none of these witnesses were examined, they being all dead Four witnesses were examined on behalf of the defence to prove the execution of the bond, and the death of the attesting witnesses. The evidence for the prosecution may be divided into the following heads. Viz. documentary oral and circumstantial.

As to the documentary evidence ; certain accounts were produced to show that the amount covered by the bond was not entered in those accounts, but those very papers proved the existence of other account books which were not produced A Muktarnamah was also produced in which it was mentioned, that Bulluky Dass owed only ten thousand Rupees to Maharajah Nundo Coomar, this Muktarnamah was not attested by any officer of Court, its authenticity depended on the evidence of Kissenjan Dass and Kuree Dass Puthok Kissenjan Dass said that though he witnessed the Muktarnamah,he did not actually see Bulluky Dass sign it. "It was carried by Pudma Mohan Dass to Chandernagore and signed there by Bulluky Dass and brought to me and I knowing his hand writting had witnessed it " the other witness Kneeda Puthok said that he saw Bulluky Dass sign the paper in his own house at Calcutta This discrepancy as to the place of execution of this Muktarnamah, was not pointed out by the Judge to the Jury, though this Muktarnamah was produced by the prosecution, as a strong piece of evidence to show, that Bulluky Dass did not owe more than ten thousand Rupees to Nundo Coomar. As to the non-existence of the amount of the bond in the account, the evidence of

Kissenjan Dass ought to be perused for an explanation. Kissenjan Dass stated that when after the death of Bulluky Dass, he drew up the account of his Rojnamah, no mention appeared in it of the Jewels for which the bond was executed, upon this he asked Pudmamohan Dass for an account of Jewels, Pudmamohan Dass produced a kararnamah, in the hand writing of Pudmamohan Dass and signed by Bulluky Dass. From this document Kissenjan Dass made an entry in the books of Bulluky Dass, giving credit to Nundo Coomar for a sum of Rupees 69,630-7 annas with particulars, exactly corresponding with the bond alleged to have been forged (Vol. I., Page 135-36). Sir James Fitz James Stephen observed that, if this evidence was true, Nundo Coomar was clearly entitled to an acquittal; but he disbelieves this evidence on the ground that it was possible that Pudma Mohun Dass may have been a party to the fraud, but he overlooks the fact that such a gigantic fraud, could not have been committed by Pudma Mohun Dass alone, without the knowledge and consent of Mohun Prosad, Gunga Bissen and other persons intimately connected with the estate of Bullaky Dass; and if Mohun Prosad also had not been a party to the fraud, he would have immediately revealed the fact to the widow of Bullaky Dass. According to the will of Bullaky, Pudma Mohun Dass had substantial interest in the property left by him; both Sir Elijha Impey and his present advocate Sir James Stephen have utterly failed to assign any reason whatever for imputing this fraud to Pudma Mohun; why should he join with Nunda Coomar in order to commit a fraud against his own interest, and that of his benefactor's widow? No reason indeed can be assigned for this motiveless crime.

Sir Elijah Impey in his summing up observed that "Kissenjan Dass delivered all his evidence till this morning, with such simplicity, and with such an air of candour, that I gave full assent to everything he said," but this witness appeared untrustworthy to the Judge when he was recalled by Nundo Coomar and stated that, Mohun Prosad knew about the existence of the

Korarnamah. Kissenjan Dass from the very beginning made mention about this Korarnamah in which the whole of this transaction was written (Vol. I. page 158-164.)

The Judge was prepared to believe Kissenjan up to this point, but as soon as he mentioned that this korarnamah was known to Mohun Prosad, Sir Elijah Impey lost his confidence in the witness and observed ; "when he is examined as to the reason of his "not having told it before, all that simplicity, all that air of "truth and candour, what we had remarked in him instantly "vanished ; his looks were cast down, his tongue faltered, he "prevaricates, he contradicts himself, he did not seem the same "man."

I do not know what reason can be assigned for disbelieving Kissenjan Dass, is he to be disbelieved, simply because he omitted to mention the fact that, Mohunprosad knew about the existence of the Kararnamah. He assigned very good reason for not mentioning it before, he said, he did not tell it because he was not asked. It cannot be expected that a witness should speak everything he knows in one continuous breath. It is true, that Kissenjan Dass, when put under cross-examination appeared confused and bewildered, but looking to the long and severe cross-examination to which he was subjected by the counsel for the prosecution and the Court, it was not a matter of wonder that, he was confused and nervous, and as if to avoid a persecutor gave any answer, which to his bewildered brain was suggested first ; but on the main points, his answers were consistant and rational ; we are not now in a position to know in what tone those questions were asked, but to give an idea to what torturing extent the witness was cross-examined by the Court, I will give here the questions asked by it, and also the answers given by the witness, verbatim.

Q. As you were sworn to tell the whole truth and have mentioned this kararnamah so often, why did you not mention this circumstance before.

This question assumes, that the fact of the witnesses omitting to mention that, Mohanprosad knew about the existence of kararnamah, rendered him liable for a criminal prosecution for perjury, and perhaps the question was asked in such a tone, and manner, as to terrify the witness out of his wits; if we go through the long course of cross-examination from this point, we can clearly see, how step by step the witness became nervous and confused, and add to this the awe inspiring dignity of the judges, by whom poor Kissenjan was subjected to such lengthy cross-examination ; any of us under the circumstances would have committed the same blunder.

A. If no body asked me about it, why should I tell the bad actions of Mohun Prosad. At this point the Court took up the cross-examination in its own hand.

Court—Because it is to save the life of an innocent man ?

A. Now you ask me the question, I recollect it, I did not before.

Q. Who have you conversed with since last night ?

A I went down to examine the papers; came here, went home, and did not see or converse with any one last night.

Q. Have you spoken to any body to day ?

A. I went to the house of Mr. Jarrett to converse with a Nagree Moharar.

Q. Were there any other people at Mr. Jarrett's ?

A. There were ten or twelve people.

Q. Did you converse with any one of them ?

A. I did not: I conversed with my own man.

Q. Did you speak to your own man about the kararnamah ?

A. I did not speak to any one. I spoke to no body but the Court

Q. Did not you send a written account to Moharajah of everything that you knew ?

A. I did write a Persian letter to Moharajah ; Moharajah wrote a Persian letter to me, having read it, I wrote him

an account of book and accounts, and a few words of circumstances that happened before Bullaky Dass's death.

Q. Did you in that paper relate this circumstance ?

A. So far as related to Pudma Mohun Dass, I did,—

Q. Did you write that paper for the purpose of acquainting the Moharajah of all you knew ?

A. I did inform him of all the circumstances, but this—

Q. Why did you not inform him of this ?

A. Mohun Prosad desired me to say the words were erased and scratched out, and therefore I did not say any thing about it.

Q. When did Mohun Prosad desire you to say this ?

A. He told me a great while ago before Ballgovin of all the circumstances.

Q. Did you mention in your letter, that you wrote to Moharajah what Mohun Prosad had said to you ?

A. No.

Q. Why did you not ? Can you tell any honest reason ?

A. Because I am a servant to Ganga Bissen, and Mohun Prosad is his attorney, and Ganga Bissen lives with Mohun Prosad.

Q. Did you show Mohun Prosad the letter you wrote to Moharajah ?

A. I did not, I only wrote to Moharajah to acquaint him with the accounts.

Q. Did you write nothing, but concerning accounts ?

A. I must own the truth ; I did not wrote to Moharajah any thing about the circumstance: Mohun Prosad a great man he told me not.

Q. Was not Moharajah a greater man than Mohun Prosad ?

A. I was much afraid of Mohun Prosad.

Q. Did you recollect this circumstance at the time you wrote this letter ?

A. I did not.

Q. If you had recollected it, would you have wrote it ?

A. I certainly should.

Q. Then your being afraid of Mohun Prosad was not the reason why you did not write it ?

A. I am much afraid of Mohun Prosad.

(Question repeated.)

A I was afraid of Mohun Prosad.

(Question again repeated)

A. I did not recollect it.

Q. The being afraid of Mohun Prosad, and the not recollecting it, are two different reasons. Both of them cannot be true, was it because you were afraid of Mohun Prosad : or because you did not recollect it ?

(No answer could be procured)

Q. When did Mohun Prosad first bid you mention it ?

A. He took a written paper from me, in this written paper he made me write ten words I did not know, and leave out ten words I did know.

Q. Do you mean that Mohun Prosad occasioned you to write to Moharajah ?

A. Mohun Prosad and I were on bad terms, when the affair was in the Adalat. I gave evidence in favour of Moharajah : the complaint was, that Moharajah had taken money oppressively. I gave evidence that he did not.

Q. Was you at that time afraid of Mohun Prosad ?

A. No : I was not afraid at that time.

Q. Were you afraid of Mohun Prosad, when you said that the books of the army were separated from Bullaky Dass's other papers by his order ?

A. Mohun Prosad forbid me to tell. I am afraid of him.

Q. When was it Mohun Prosad told you not to mention it ?

A. I believe a year and a half, or two years ago. In the late prosecution Moharajah told me, if I would write out a paper, I should have my wages. I did write out a paper : I do not know the particulars.

Q. Did that paper contain all you know of this transaction?

A. I wrote it out, and I copied it.

Q. Did Mohun Prosad tell you what to write, or did you tell him?

A. Mohun Prosad wrote it out first, he used to tell me, when I wrote it out, he would pay me the wages; it remained ten or four fourteen days on the bed of Ganga Bissen.

Q. Did Mohun Prosad, at any other time, except the time last mentioned (that is about two years, or a year and a half ago) desire you not to mention it?

A. In the paper he gave me to copy this is not mentioned, which I observed could not add any thing to it.

(Question repeated)

A. No; about two years, or two years and a half ago, he told me two or three times but never told me since, I put him in mind, I knew another circumstance.

Q. Did he ever mention it but these times?

A. No.

Q. When did you receive the letter from Moharajah?

A. It is 8, 10, or 15 days since I got Moharaja's letter.

Now I leave it to the reader to say, whether this was a fair cross-examination on the part of the Court.

The Court was of opinion, that according to the rules of evidence the entry made by Kissenjan Dass, in Bulluky Dass's book after his death, on the report of Padma Mohun Dass, was no evidence; but still as a matter of favour to the prisioner the evidence was allowed. Then Sir Elijah Impey sheds crocodiles tears, that he was compelled to make bad observations on the evidence of a man, of whom he entertained so good an opinion; Kissenjan Dass was a trustworthy witness so long his evidence as to the kararnamah was looked upon as inadmissible, and that part could be avoided on legal grounds, and the other part, as to his ignorance of the existence of the deposit and loss of the jewellery, could be received in evidence, but when Kissenjan

proved that Mohun Prosad was aware of the existence of the kararnamah and saw it, it became a strong piece of evidence against him, because it rendered this much clear that although the existence of the kararnamah was known to all the members of the family, and to Mohon Prosad especially, still he instituted these criminal proceedings and as it throws a very great doubt upon the whole prosecution so Kissenjan's evidence as to the existence of kararnamah was to be avoided any how; bullying and brow-beating were the only means left for that and as I have already pointed out, they were very successfully employed. Kissenjan's evidence which clearly prove the existence of the Kararnamah, coupled with Ext. M. signed by Mohun Prosad, and Padma Mohun Dass, should have produced a strong doubt in the minds of the Judge and the Jury, and the benefit of it should have been given to the prisoner. Sir James Stephen says that according to the strict rules of evidence entries made by Kissenjhan Dass, in Bulluky Dass's book after his death, on the report of Podma mohon Dass, were no evidence; it was a mere record of Pudma Mohon's statement, it will be remembered that Bullucky Dass by a will dated 12 June 1769, appointed Ganga Bissen and Hingulall his trustees, leaving to Pudma Mohun Dass a quarter (four anas) of his property, and the management of his business, so it will be seen that Padma mohon Dass was not only the sole manager of the business but was also owner to the extent of the quarter of the property left by Bullucky, and he also represented the trustees. Kissenjan Dass also represented the trustees as their Gomasta, Mohun Prosad also represented the trustees, and must have instituted the criminal proceedings as Mooktar of Ganga Bissen; under these circumstances I do not see the reason why those entries were not to be received as evidence in the case, as entries made against the interest of the persons making them; the entries were made under the instruction of Padma Mohun Dass, and as such they were binding against the trustees as well as against Mohun Prosad in his capacity as a Mooktar of Ganga Bissen.

Now as to the Kararnamah ; Sir James Stephen observed, that the necessary preliminery proof to make secondary evidence of its contents admissible was not given, but the evidence of Mohon Dass who said, that he made a copy of the Kararnamah by Nundakumar's desire, and Moharaja Nundakumar gave the original to Pudma Mohon Dass and kept the copy himself, clearly assigned the reason ; why the original document could not have been produced ; the said copy was also attested by one Sangolall (see Vol. I. Page 137, and the Trial of Moharaja Nundakumar Page 100 to 103.) A court of justice and good conscience, trying a man for capital offence should have been quite satisfied with this evidence, and should not have mentioned of this Kararnmah and the entries, in such a way, as to create an impression in the mind of the Jury, that they were not admissible evidence in the case.

The account Ext. M. was attested by Luchman Dass, brother of Pudma mohon Dass and Kissenjan Dass ; this Ext. M. showed that entries were made for different amounts due to Moharaja Nundakumar. Sir Elijha Impey attempts to get over this, and other accounts by saying that, because the sums as Padma Mohon Dass says, been paid therefore they would certainly take credit for them, but his Lordship overlooked the fact that had it been an imaginary credit, as alleged by Mohun Prosad, where could Padma Mohun Dass, find so many detailed accounts of those transactions, the account consists of several items, had it been a fictitious one, the whole sum would have been placed in one item

It is very surprising that although Mohun Prosad suspected about this bond as soon as it was shown to him, yet he did not tell it to the widow of Bullaky Dass, he was asked;—

Q. Did you ever mention your suspicion to the widow ?

A. I did not with my own mouth, because I was not with her, but by the means of Dharamcharan I did.

Q. Did you ever by those means inform her, that you thought it a forged bond ?

A. What I told her through Dharamchand was, that the Dar-

bar expenses charged in the account were unjust (Nundkumar's Trial page 97.)

So it will be seen that, Mohun Prosad did not inform the widow about this forgery—he simply informed her that the Durbar expences which were only six thousand rupees were unjust. The whole charge of forgery depends upon the suspicion of Mohun Prosad, but Pudma Mohun Dass and Gunga Bissen the nephew of Bullaky, never suspected the account and the bond; every farthing due to Moharajah were paid up by them. After the expiration of nearly seven years, this Mooktar suddenly springs up as a Paragon of out-raged virtue and prosecutes Moharajah Nundakumar for forgery, and he does this only on his own suspicion, this man signed the Ex. M. and had the audacity to deny that this was an account of Moharajah Nundakumar, though Butta, premium &c. were expressly mentioned in the account, as to correspond with the explanation of Maharajah Nundakumar himself, this witness was then compelled to admit that the part of the account which relates to Durbar expences was of Moharaja's (See The Trial of Nundakumar, Page 95-96.) Mohun Prosad's statement that Moharajah Nundakumar declared that he had prepared three papers, the amount of one of which was Rupees 480,21. was not understood by the court to be a confession of the forgery. I therefore omit to make any sifting comment upon it. Sir Elijah Impey must have been compelled to put that interpretation upon the statement of Mohun Prosad, as in the first place the statement did not convey any idea of confession and in the second, no sane man could have persuaded himself to believe, that a shrewed man like Moharaja Nundakumar would confess to Mahun Prosad, that he had committed a forgery, what necessity there was for this confession? Then comes Mr. Cammaluddin to prove that he is the Abdooh Cammal Mohomed of the bond, Moharajah Nundakumar denied it, but Mr. Cammaluddin was forcibly thrust in the transaction by the prosecution. It was known all over Calcutta, that he was an instrument in the hands of Hastings

in the first prosecution against Moharajah Nundakumar and Fowke. The story of this witness is as follows:—

That he sent his seal to Moharajah Nundakumar, inorder to enable him to sign and submit a petition to the Nawbab for some employment, and that the seal was never received back by him, and that he was formerly called Abdooh Cammal Mohomed And that he sent with the seal one gold Mohur and eight rupees to Nundakumar for presenting the petition, and a similar Nazar to the Nowbab to accompany his petition. (Vol. I. Page 114.) No reason can be assigned why Cammaluddin instead of sending few blank papers sealed and signed by him had sent his seal itself to the detriment of his other business. But in The Trial of Nundakumar I find Cammaluddin in his evidence stated that he sent one gold Mohur and four rupees as a Nazar to Moharajah Nundakumar and one gold Mohur and four rupees as a Nazar to the Nowbab. But Hussen Ali his servant said that he with his own hand sewed up a bag containing his master's seal, three gold Mohurs and eight rupees; and delivered it to Cammaluddin, who said he meant to send it to Nundkumar.

In the face of the enemity existing between Camaluddin and Nundakumar, and this discripancy, Cammaluddin's evidence should not have been believed. Cammaluddin said that he was informed of his seal being used by Nundkumar from Mohun Prosad, when he (Commuluddin) was pressed by Mohun Prosad for the payment of 600 rupees which he owed to the estate of Bullaky Dass, what became of this 600 Rs.? how Camal paid it, were matters worth of enquiry. Camaluddin says that on hearing this he went to Nundakumar and told him "what Mohun Prosad had said, to which Nundakoomar replied "it is true, I have fixed your seal which was in my possession to "the bond of Bullaky Dass, having sworn, you will give evi- "dence of this before the gentlemen of Adalut; I answered how "shall I be able to take false oath; he said I had hopes in you; "I answered men should give up their lives for their master, but

"not religion" (Vol. I. Page 117-118.) This statement was made after the litigation had commenced in the civil court, if Nundakumar had hopes of getting Cammaluddin to give evidence for him, he would have cited him as a witness in the civil suit like Yar Mohammud and others, who proved the execution of the bond and the death of the attesting witnesses. The civil suit has been pending for three years and during this long interval, Mohun Prosad could have easily ascertained everything connected with the use of Cammaluddin's seal by Maharajah Nundakumar, at any rate when Mohun Prosad told to Camaluddin that he was a witness to the bond, he must have learned that Cammaluddin's seal in the bond was a forgery and yet Cammaluddin was not cited as a witness in the civil court on behalf of the plaintiff; if Abdooh Camal Mahomed of the bond was the notorious Cammaluddin, he must have been cited as a witness in the civil court either by Nundakumar or by the plaintiff. I really do not understand why Cammaluddin was not put under a most sifting cross-examination as to his connection with the previous prosecutions and other important matters too numerous to be enumerated here. No attempt was even made by the prosecution to prove that Cammaluddin was a witness in the civil suit, secondly it is very improbable that a shrewed man of the world like Nundakumar did suddenly and without considering the importance of the subject admit to Cammaluddin that, he used his seal without his consent, or in other words committed a forgery, when he might have very easily silenced him by telling him, that he was not the man who subscribed the bond. Then as to the evidence given by Moonshee Saduruddin and Khajah Petruse to coroborate Cammaluddin; I need only point out that the statement was made to them after the dispute had commenced and after Cammaluddin had seen Mohun Prosad. Besides that the fact that Warren Hastings by setting on Nundakumar against Mohamud Rejakhan had made the whole mohomedan community his enemy, should have been taken into consideration; was not Khajah Petruse one of the re-

sidents of Calcutta? to whose combined animosity Francis had to submit and record the minute of the 16th August?

Cammaluddin according to his own showing, had known Nundakumar and had been protected by him from ten years of age, (see. vol. I. page 113-14.) and yet he volunteered most officiously to give evidence in the case for the purpose of getting his former banifactor hanged; any man under the circumstances with the virtue of a Judhistir would have avoided to give evidence in the case at any hazzared, Mohon and Camal were the two witnesses produced to prove the actual forgery by way of an inference and by proving certain confessions of Nundakumar. Mohon Prosad said that Nundakumar declared to him that he had prepared three papers, the ammount of one of which was Rupees 48021, and Camal said that Moharaja Nundakumar told him that, he himself fixed Camaludddin's seal to the bond. Mohon Prosad's evidence was not construed to ammount to a confession and this part was explained away by Sir Elijah Impey himself; Cammal Uddin's evidence as to the use of his seal does not necessarily render the bond a forgery, it raises only a remote inference of the forgery of the bond. Even if we believe Cammal, it does not necessarily follow, that the bond itself was a forgery, especially when we find that the bond was paid up by the persons whose interest it was not to pay it. To get a true case proved by one or two false witnesses is a notorious characteristic of we Bengalees, that does not make the whole case false, and for the truth of my assertion I appeal to all the Judges of India.

But this theory does not hold good to Cammal Uddin's case, because any man having a particle of sense left in him, would not have cited another to prove a false case without consulting him first. Now as to the veracity of this witness, if we once admit that Nundakumar had hopes of getting Cammal Uddin's evidence in his support, then we make him a man of so low repute and morality that false evidence was easily expected from him, and as such his evidence should not have been at all

believed. If we admit even that Yar Mahomed had learned his evidence by heart on account of the absurd answer he gave, "if I begin at the beginning I can tell, I cannot begin in the middle", still we have three more witnesses to prove the execution of the bond, and the death of the attesting witnesses.

Yar Mahomed's evidence alone could not affect the whole case. When I come to the summing up of the Judge, I shall there point out how poor Yar Mahomed was compelled to make that statement.

One Sabut Pathok and Raja Nobokissen were produced to prove, that the signature of Salabat in the bond was not in his own handwriting. It cannot be ascertained now what kind of position Sabut Pathok held in society. As to Raja Nobokissen, he gave his evidence with such an amount of affectation, that I am inclined to say even at this distance of time that his evidence does not carry with it that amount of credit to which he was entitled by his position; besides that according to the then existing state of Calcutta he must have been a rival to Nundakumar and as such stood in need of Warren Hastings' favour; who knows that he was not as pliant as a veritable Jo-hokom type of Raja of the present age. His evidence must have lost much of its weight and importance, if he had been cross-examined as to the facts mentioned by Mr. Beveridge in his essay in the January number of the Calcutta review (see page 123) where on the authority of Bolt's work, it is stated that Nobokissen was on bad terms with Nundakumar on account of the latter having taken part in prosecuting him on a charge of having violated a Bramin's wife. I would therefore, without making any further comment on the evidence of these two witnesses, observe that their evidence at the most amounts to an opinion and as such is always very unreliable.

Strong attempts were made from both sides to prove and disprove several collateral circumstances in the case, for instance, an attempt was made by the prosecution to prove, that there was no Mathub Roy of Dhoniakhali, but the attempt was not successful. In the course of the judicial enquiry it came out,

that there were two Mathub Roys in Burdwan, and one of the Mathub Roys was claimed by Taj Roy as his brother; then some evidence was given that no jewellery was deposited by Nundakumar with Bullaky Dass, and that excepting the loss of jewels to a trifling amount, no jewels were plundered from his house, and this evidence to negative the deposit of the jewellery was contradicted by the Kararnamah and other evidence. In order to show the similarity of the seal of Bullaky Dass, Meer Assud Ali produced a paper purporting to be a receipt given by Bullaky Dass to him for some valuable effects of Kassim Ali; but the prosecution attempted to make out, that Bullaky Dass was kept a prisoner at Buxar, when the valuable effects contained in the receipt were alleged to have been given to him. Kissenjan Dass was with Bullaky Dass at the time, and he stated that if such treasures as alleged by Assud had been brought to Bullaky Dass at the time of the date of the receipt, they must have been seized by Shoojauddawalla's treasurer, who had charge of Bullaky Dass, and plundered by him. But could not the said treasurer compel Bullaky Dass to grant Assud Ali a receipt? So in almost every point there were attacks and counter attacks, and every point excepting a very material one, to which I shall hereafter refer, was hotly contested and brought to the notice of the court. I need scarcely point out that, Mir Assud's evidence was not at all material to the case, he simply filed a receipt, which he said was given to him by Bullaky Dass, and which was sealed with the seal corresponding with that, which purported to be the seal of Bullaky Dass to the bond. The impression of the seal on the bond was admittedly like that of Bullaky Dass's genuine seal. This fact was admitted by Sir Elijah Impey, in his summing up (see Vol. I. Page 57), and was never seriously denied by the prosecution, so there was no necessity to give any false evidence on this point. Besides that, it will be seen that Mir Assud Ali was a man of position and well-known to the officials of that time. Sir Elijah Impey could not assign any reason, why this man gave false evidence in this case (see Cal-

cutta Review, January 1856. Page. 111.) We have not got the full records of the case, nor the information necessary to understand every minute fact of it, so I would again observe that after the expiration of more than a century, we can only judge of the case from the broad facts of it. I have already pointed out, that the prosecution could not assign any satisfactory reason for the unprecedented delay in instituting the criminal proceedings for forgery, and paying nearly half of the fortune of Bullaky Dass, without making any reasonable enquiry as to the genuineness of the bond.

Mr. Farrer raised the following objections:—"No forgery on the executors, because the prosecutor's evidence proves, that they were previously informed of the forgery, and voluntarily paid the bond. Pudma Mohun Dass expressly knew it." Sir Elijah Impey in his summing up to the Jury could not give any satisfactory answer to that objection and for the delay. Padmamohun Dass did not institute these criminal proceedings, and neither the widow of Bullaky nor Ganga Bissen, the surviving executor, gave any evidence in the case. If any forgery was committed by Moharajah Nundakumar, it was done to cause wrongful loss to the widow and Ganga Bissen and not to Mohun Prosad. Then, who was this Mohun Prosad, at whose instance the prosecution was allowed to proceed against one of the leading men of the eighteenth century. If I pay off a bond alleged to have been executed by my father, and do not take any steps for six or seven years, will any court of Justice allow my Mooktar after the expiration of that period, to institute criminal proceedings against the said creditor and punish him without my evidence in the case? I need not further dwell on the weakness of the prosecution; Sir James Stephen himself admits that the prosecution was not strong—it was little more than a *prima-facie* case (Vol. II. Page 52.)

My opinion of this case is that, if Moharajah Nuudakumar had instituted a civil suit to enforce the bond, probably in the face of the weak evidence adduced to prove the consideration of

the bond, he could not have obtained a decree, on the ground of the bond being a contract without consideration; but looking to the strong improbabilities, the evidence adduced was not sufficient to make out even a *prima-facie* case for the purpose of a criminal prosecution. I think on the evidence adduced no human Jury free from prejudices would convict even a dog. I have already pointed out, that the evidence produced to prove the consideration of the bond was very weak. Now I proceed to discuss the point by the light of the circumstances connected with the transaction and of my own experience as a native of India. I have very great doubts as to the truth of the consideration mentioned in the bond, the amount of the bond was recoverable if Bullaky Dass succeeded in recovering two lacks or little above that from the East India Company. If the amount was due for jewellery, the bond would not have been made conditional. We are not in a position to know whether there was any hitch, in getting the money from the Company; but notwithstanding our ignorance as to that fact, I am inclined to believe that the amount of the bond was simply a bribe to Nundakumar for the purpose of getting two lacks of rupees, which Bullaky Dass deposited in the Company's cash at Dacca. Had it not been so, the payment of the amount would not have been rendered conditional on the recovery of the said two lacks. I do not see any force in the argument, that the bond was rendered conditional on the recovery of the amount from the E. I. Company, because Bullaky had no other means to pay it. Bullaky might have raised another fortune, and so he could be in a position to pay off the bond even without receiving the money from the E. I. Company. Why a man to whom money was really due, would make the recovery of that money conditional, only on the success of a particular transaction of his debtor.

Secondly the interest taken by Maharajah Nundakumar in recovering the amount of the Company's bonds is very significant. In the third place the value of the Jewellery also (48021) mentioned in the bond speaks for itself. Perhaps it is known to

almost every one of my readers, that formerly kings used to take one-fourth of the amount recovered by the plaintiffs in their Courts, and this system prevailed in cases of bribery also which was looked upon as a present (Nazar); and quite innocent in itself unless attended with any kind of injustice or cruelty; and so I think the amount mentioned in the bond was nothing but the Chouth (¼) of the amount in deposit in the company's cash at Dacca, and so it was made payable on the recovery from the Company. It falls short of Chouth (¼) by two thousand twenty one rupees. The amount of two thousands perhaps was a concession made by Nuudakumar and Rs twenty-one more were added to forty eight thousand for the purpose of avoiding the unpropitious nots. The natives of India labour under the impression that if in any transaction the amount becomes complete by nots, such as fifty thousand, forty thousand, sixty thousand &c, something should be either added or left to avoid the nots and so we find twentyone Rs over and above forty-eight thousand. I quote the very wordings of the bond here:—

" I therefore promise and give it in writing, that when I shall " receive back the sum of two lacs of Rs. and a little above, which " is in the Company's cash at Dacca, acording to the method of " reckoning of the company, I have agreed and settled, that the " sum of forty eight thousand twenty one sicca is the principal "of the amount of the said deposit of Jewels, which is justly " due by me, and over and above that, a premium of four annas " upon every rupee. Upon the payment of the aforesaid " sum from the Company's cash, I will pay that sum, without excuse and evasion, to the aforesaid Moharajah."

It will be seen that there was something above two lacs in deposit in the Company's cash at Dacca, but what was the amount above two lacs could not be then ascertained; Nundakumar was not a man to give up his claim to Chouth or for any part of the money, so this premium of four annas was mentioned as he might not be a loser in any way. I further think there would not have been any litigation if Nundakumar had paid to

Mohon Prosad his share of four anas, from his own share of the gains, to which Mohon was entitled as a Mooktar, and this non payment of the Chouth (¼) to Mohon Prosad must have given rise to the litigation and subsequent prosecution. As the bond was conditional and was executed for bribe, so no mention of it was made in the regular accounts of Bullaky Dass, but yet as it was necessary to keep some memorandum of it, so the Kararnamah was executed; the mention of the Jewellery was made to give legality to the transaction. Since writing the above the January number of the Calcutta Review containing Mr. Beveridge's article on Nundakumar came to hand, and I am glad to find that my apprehension that there must have been some hitch about the recovery of the money covered by the Company's bonds due to Bullaky Dass turns out to be correct; it appears that the amount had been placed in the Company's cash book to the credit of Mirjafar; (See Calcutta Review January 1886 Page 126) and this fact very strongly supports my theory that Bullaky Dass must have executed the bond as a bribe to Moharajah Nundakumar in consideration of the services he was to render in recovering the amount, and so the payment of the bond was rendered conditional on the recovery of the said amount from the company. It will also be seen that the arguments I have advanced in support of my theory that the bond was executed for services which Nundakumar was to render in recovering the amount from the Company, do equally go to show that the bond was not forged, because there was no necessity to forge a conditional bond, and thereby take the burden of proving two transactions; one at Murshedabad connected with the deposit of the Jewellery, and the other at Calcutta, relating to the execution of the bond. I think the records of the Sudder Dewani Adaluts and High Courts in India will be searched in vain to find out a similar case.

Mohon Prosad knew all the circumstances of the transaction and how far he would succeed in proving that there was no deposit or loss of Jewellery; and how far he could succeed to throw

suspicion upon the transaction; he also knew that Nundakumar would not disclose the truth in his defence and that more he will attempt to make out a case on the basis of the Jewellery, the more he will weaken his defence; so he instituted this criminal prosecution at a time, when Maharajah Nundakumar made himself so unpopular among the influential officials of the Company, by making accusations against Warren Hastings and many other influential officials connected with the revenue administration.

At this time Mohon must have received every encouragement not only from Hastings, but from almost every resident of Calcutta, and his story must have been greedily swallowed by each and every one of them. The bond was alleged to have been executed for some Jewellery consisting of a Pearl Necklace, Kulgah, Searpoch and four rings, which were deposited with Bullaky Dass for sale and plundered from his house at the time of the defeat of Nabab Mir Kasim Ali Khan. Bullaky Dass was a shrewed man of business well acquainted with attornies of Calcutta, and he could learn from any one of them, that he was not liable for the value of the Jewellery, if he could only prove that he had taken the same amount of care for it, as he had taken of his own property of the same bulk, value, and quality, and so he would not have so easily submitted to give the bond. Besides that, according to the rules of native society, the owner of the lost property also, consider it derogatory to his honour and position to compel a man to make good a loss which he sustained for no fault of the other, so the more we look into the facts of the transaction the more it becomes clear, that the bond was not executed for the loss of the jewellery,

Now the question arises whether sir E. Impey had deliberately murdered Nundakumar or he acted *bonafide*. Sir James Fitz James Stephen urges, that he was not the only Judge; there were other three Judges and a Jury to give verdict on the questions of fact; and it was extremely improbable to suppose that all these gentlemen conspired together, to take away the life of an innocent man. I must admit there is no direct evidence to prove

the serious charge, but there are circumstances in the case which though do not go to the extent of making Impey a deliberate murderer, but they certainly go to show that from the beginning of the trial the whole Court including the interpreter was inimically disposed towards Moharajah Nundakumar.

It is an admitted fact that Impey was an intimate friend of Hastings, and that an enemity existed between Nundakumar and Hastings since a long time before. Nundakumar brought charge of bribery and heinous corruption against Hastings and other officials, which were followed by a counter charge against Nundakumar by Cammal Uddin, though Cammal Uddin was the principal witness in the case yet the prosecution was regarded as instituted by Hastings, for Cammal Uddin had no earthly interest to prosecute Nundakumar for conspiracy against Hastings. It is also clear that Hastings consulted with the Judges in this matter. (See Vol. I. page. 79—80.) The theory of this prosecution, was that Mr. Fowke and Moharaja Nundakumar compelled Cammal Uddin by force to sign a paper containing accusation against Hastings and though the prosecution was supported by the evidence of Mr. Hastings and several other witnesses, yet the Jury returned a verdict of not guilty. At this time another prosecution against Nundakumar and Fowke was going on at the instance of Richard Barwell, Esqr., and in this prosecution also, Cammal Uddin was the principal witness, when these two prosecutions were unsuccessful the last prosecution for forgery was instituted, in which Cammal Uddin again made himself so very conspicuous. These facts speak for themselves, and need no comment. We further find that before this prosecution, both Mohun Prosad and Cammal Uddin had frequent interview with the Governor General. (See Vol. I. Page 56.)

The charges brought against Hastings were so widely known that some of them can be proved even now. Under the circumstances, it was a matter of highest concern to Hastings to bring calumny upon Nundakumar and disgrace him in the estimation of the public, at that moment this could be very

easily done by Hastings with a respectable exterior through the instrumentality of Mohun Prosad, Hastings on the one hand, may have encouraged the prosecution, and on the other he may have painted Nundakumar a veritable black devil to his friend Impey, whether Warren Hastings took Sir Elijah Impey to his confidence, and openly asked him to remove Nundakumar from his way, is a question which cannot be solved now; but looking to the relation which existed between Hastings and Impey, and their conduct throughout and subsequent to the trial, it can safely be asserted that Impey started with the trial of the case with a preconceived idea of the guilt of Nundakumar; and any man having the least experience of the official clique, can understand how easy it was for him to bring round the other Judges and the Jury to his opinion, and how Hastings could also influence Impey without making him appear dishonest. Hastings may have adopted the same means, which in the good old days of indigo Raj, our planters did with district Magistrates against their Zamindar opponents, and prepared the minds of the Judges to believe any story against Nundakumar. This is the most lenient view of the case that can be taken under the circumstances disclosed, Impey stands convicted by his own confession, that though Nandakumar was entitled to a respite, he did not grant it for the purpose of asserting his own dignity, and power over the council. I do not know in what light, this passive act is looked upon by the Europeans, but to our idea of Justice, the act of not saving the life of a man, for the purpose of asserting one's own dignity, is horrible and shocking to humanity itself; could not Impey, giddy with the eminence of his situation, think for a moment, that one day he and his victim Nundakumar shall have to appear before a common tribunal, to answer for their conduct; where of all the pleas the plea of dignity, was least likely to prevail, and where, "ব্রাহ্মণা বহুর জন্য মাহি আর পদ জন্য"

Sir. E. Impey in a letter addressed to Governor Jhonstone writes thus "My wishes to have represented him as an object of "[mercy] and to have procured the extension of it to him, were,

"considering the heavy task I had on my hands, give me leave "to say, more strong than yours could possibly be; and I call God "to witness to [it] was my firm intention so to do in case he "should have been convicted, had not the conduct of that "unhappy man, and of the gentlemen who possessed the powers "of Government, in my opinion rendered it absolutely necessary, "both in support of the administation of Justice and of my own "honour, to pursue different measures" (Vol. I. 255—256.)

As to the summing up of Sir Elijah Impey, although I am not prepared to say, that it savoured of the most gross and scandalous partiality, as stated by Burke in his impeachment against Impey, yet I can assert this without fear of contradiction, that the whole tenor of it was against the prisoner, and even now it can be seen on which side his leanings were; Sir Elijah Impey was clearly very wrong to point out to the Jury the weakness of the defence, and drop a hint to draw from it an inference of guilt against the prisoner—(Vol. I. Page. 169.)

Sir Bulwer Lytton has adverted in his novel of Engene Aram to the wonderful effect, which the summing up of a Judge produces on the minds of a Jury I need scarcely say that, that effect becomes ten times stronger, when the summing up is supported by the conduct of the Judges towards the prisoner In this case, it could clearly be seen from the line of cross-examination adopted by the judges towards the witnesses of the prisoner, how eager they were to break down the witnesses for the defence. Every possible attempt short of physical torture was made to compel the witnesses to commit some kind of contradiction. When the mind of the Judge is prepared to come to a preconceived conclusion, it is very easy for him to find fault with the evidence which comes in his way; if the witnesses agree in stating the circumstances connected with the transaction, the Judge may dispense with their evidence by observing, that how strange it is, that the witnesses after the expiration of so many years, can remember all the circumstances of the

transaction, on the other hand if the witness states only some principle circumstances and do not remember others, it is every day practice with our Judges, if they are inclined to disbelieve the witnesses to observe, that if these men were really present at the time of the transaction, they might have very easily stated this and that with their plural these and those. Sir James Stephen observes, that the suspicious part of the evidence of these witnesses, was their extraordinary and unnatural agreement, in a number of matters of minute details which they could have no special reason for remembering.

Sir Elijah Impey also in his summing up, expressed his surprise, how the witnesses could be so uniformly accurate in describing the order in which they sealed and signed the document. "His Lordship observed—"I make no observation on the variance of the witnesses to the execution for except in two instances, one of the witnesses. who remembered the sum in the bond from its being explained in a language he did not understand, the other ShekYar Mohommud is the only witness that spoke with precision as to the sum," Shek Yar Mohommud's evidence was then condemned on the ground of contradictory statements he made, and the other witness referred to is Chaitannya Nath. The remark that Chaitannya Nath remembered the sum in the bond from its being explained in a language, he did not understand is very unfair, the witness distinctly stated that, when the bond was read before Bullaky Dass, he asked Bullaky Dass, as he did not understand Persian what was the amount, and Bullaky Dass told him, that it was between forty and fifty thousand rupees. (Trial of Nundakumar, page. 52.) I think the answer was quite sufficient for the purpose of knowing how the witness could know the amount of the bond, but nevertheless the witness was allowed to be cross-examined to a considerable length, and by degrees he was led to the absurd position of virtually saying that the amount of the bond was mentioned in a language which he did not understand. I give below the

cross-examination of Chaitannya Nath on this point. (Trial of Nundakumar Page. 52. and vol. I. Page. 154.

Q. Was it mentioned in the house of Bullaky Dass, at the time of executing the bond, that it was for that sum ?

A. I can not say, I do not remember well, it was between forty and fifty thousand rupees.

Q. Was it mentioned at that time ?

A. I do not remember, I don't know.

Q. How come you then to know it ?

A. Bullaky Dass ordered the writer to read it, I heard it, and remember that.

Q. Did the writer read the whole bond ?

A. He did from begining to end.

Q. Was it only from hearing it read ; that you know the amount ?

A. I know it from no other reason ; I heard of the bond at Moharaja's before.

Q. Did you hear the sum at that time ?

A. No.

Q. In what language was it read ?

A. In Persian.

Q. Was it read more than once.

A. I remember no more than once ?

Q. Was it read in any other language ?

A. I do not remember that it was.

Q. What is Persian for forty thousand ?

A. How should I say ? I do not understand Persian.

Q. If you did not understand Persian, and only knew the sum of the bond from its being read in Persian, then how can you tell the amount of the bond ?

A. You have sworn me upon the water of the Ganges, how can I tell more than I remember ?

As regards the remark, that the witnesses agreed in minute details I need only observe; that was it not probable that before the witnesses appeared to give evidence in this sensational case, they

should have met together and talked over the matter, so as to bring every circumstance into their recollection. As to the statement of Yar Mahomud that he could begin at the begining but could not begin in the middle; I would only draw the attention of my readers to the kind of cross-examination to which he was subjected; he was almost tortured to make that statement. To enable my reader to come to a proper conclusion. I give below few of the questions and answers preceeding to that statement by way of specimen (See. The Trial of Nundakumar. Page. 68—69.)

The cross-examination begins at page 68. and ends in 77.

Q. When Bullaky Dass come to Moharajah Nundakumar, had he any sevants ?

A. He had Peons and Khajmotgars I could not * * * them, one Khajmotgar went up for his shoes.

Q. How many ?

A. I can not tell.

Q. Was any on horse back ?

A. No.

Q. Was their five or six ?

A. I can not tell their number.

Q. What did Moharaja Nundakumar say, when first he came to his house ?

A. He said what I have given in evidence.

Q. What did he first say ?

A. It has been already written .

(Question repeated)

A. I have related every thing, from the time he came, to the end.

(Question again repeated.)

A. If I begin at the begining, I can tell, I can not begin in the middle.

The witness had distinctly stated that Nundakumar first demanded the money back from Bullaky, yet he was put under

* On the original two words seem to be erased.

a severe mental torture to make this statement. All the witnesses for the defence underwent very long and very severe cross-examination by all the Judges Seriatim Sir. Robert Chamber's excepted, (See. Vol. I. Page. 172.) and the attitude of the Judges was such, that it led Nundakumar to speak to Farrer, that it was useless for him to take any trouble for the defence, because it was clear that the Judges were determined to punish him; and that he was therefore ready to submit to his fate, on this Farrer brought the matter to the notice of the Judges and they also admitted before him :—that they were treating the witnesses for the defence in a different way from those of the prosecution for the reasons mentioned in the evidence of Farrer. Farrer stated before the impeachment committee, that the following was the substance of the answer of the Judges to the best and utmost of his recollection and belief. (Vol. I. Page. 179.)

1. That the nature of the defence after the plain tale told by the prosecutor, and his witnesses was in itself suspicious.

2. That they found prosecutors advocates wholly unequal to the task of cross-exammining the witnesses.

3. That as to any difference of treatment by the court between the prosecutors witnesses and the prisoners, in the first place the prosecutors case did not appear so suspicious as ours did, and in the second I had cross-examined the prosecutor's witnesses as far as the case seemed to them to require" (Vol. I. Page 175.)

Now I would ask every one of my readers, whether the Judges did by their attitude frightened the witnesses, and compelled them to make cotradictory statments ?

If a Judge be determined to break down the witness, he can do so very easily, and that the Judges were so determined in this trial, is proved by their own admission and conduct. Under these circumstance it is no wonder

that some of the witnesses for the defence became nervous and confused at the time of giving their evidence. The Judges also appear by their own admission to have convicted Nundakumar before the trial was half over, but in reallity he seems to have been convicted before the trial was commenced. Mr. Farrer was flattered in a very refined way and we need not go far to seek for the reason. In my opinion Mr. Farrer performed his duty in a very perfunctary way, he did not make any attempt to bring out the facts of the quarrel between Nundakumar and Hastings, and very great advantage of this omission is taken by Sir James Stephen. Sir. E. Impey also in his defence before the impeachment committee made the following statement.

"By rumour, and by rumour only, it was known that "Nundakumar had prefered some accusations against Mr." "Hastings for corruption in his office * * * The particulars of "the accusations, the opinion of majority of the council, of their "truth, the proceedings on them, the conduct of Mr. Hastings, "the grounds on which the majority thought the accusation "could be maintained, were all matters capable of easy proof; "they were proper subjects to go to a Jury, they certainly would "have been given in evidence and had it been true as is averred "that they were such as could have no doubt in the mind and "opinion of the person acquainted therewith, that the prosecu- "tion was set on foot with a view to defeat the accusation "against Hastings, why was the evidence kept back? why were "not the court and Jury acquainted therewith? If they could "leave no doubt in the mind and opinion of the Jury, the Jury, "could not have hesitated to acquit the prisoners. If the Judges "must have been convinced it would have been their duty to "direct an acquittal. They were not thought sufficient to pro- "duce that conviction when the transactions were recent; if they "had been, they would have formed a material part of the "defence. Why then is it averred they must produce such,

"conviction now, at the distance of thirteen years from those "transactions" ? (Vol. I. Page. 183—84.)

Sir James Stephen also takes great advantage of this omission, and observes, that Farrer from first to last never suggested either directly or by a single question in crosse-xamination ; that the accusation against Nundakumar was a malicious prosecution got up to silence the accuser of Hastings. Vol. I. Page. 182.

I do not find fault with Impey for his taking advantage of this omission before the impeachment Committee, because he did so in his defence to save his head from the axe of the executioner ; but what surprises me most is, why Sir James Stephen after the expiration of a century adopts the argument of Sir Elijah Impey with all the zeal and dexterity of a special pleader. Does Sir James Stephen mean to deny that there were accusations against Hastings brought by Nundakumar a few days before this prosecution, and that an enmity of long standing existed between them as pointed out by Mr. Beveridge in his essay in the Calcutta review ? Why the facts connected with the dispute between Hastings and Nundakumar, were not exposed during the trial is indeed very curious. Why Colonel Monson and Messers Joseph and Francis Fowkes were not cited as witnesses for the defence, is a mystery which can not be solved now. It is true that Mr. Beveridge in his essay stated that Hastings was examined as witness on Nundakumar's trial, but he made a mistake in accepting that Hastings was examined on the trial for forgery ; in fact he was examined in the conspiracy case, so it will be seen, that this important case was allowed, to be concluded without the evidence of these important witnesses, although Hastings denied that he had any thing to do with the forgery case, but he could not have possibly denied his connection with the previous prosecutions against Nundakumar and Fowke, and the encouragement he gave to Cammaluddin in those prosecutions. To what I should atribute this omission ? Now we can give three different explanations for this ; we can atribute this to the ignorance of Farrer or to his dishon-

esty or that Ferrar thought from the attitude of the Judges, that the more he will attempt to expose Hastings, the more he will incur the displeasure of the Court and injure his client; and therefore he may have thought it proper to adopt this conciliatory policy. But had he acted boldly without caring for the favour or frown of the court, he would have exposed all the previous transactions connected with Hastings and Nundakumar. Farrer not only omitted to expose Hastings by proving his connection with the previous prosecution for conspiracy, but he also made a very ill advised admission, about the genuineness of a letter filed by Cammaluddin, which he had to withdraw at the suggestion of the court; but that withdrawal rather injured his client more, the moral effect of that admission was not removed by that withdrawal. The letter referred to, contained an acknowledgement of the Nazar, which Cammaluddin in his evidence stated to have sent with the seal; but no mention of the seal was made in the letter. It is very strange, that it did not strike Farrer, that the letter to a great extent corroborated Cammaluddin; if Farrer was prepared to admit the letter, because it did not mention about the seal, he should not have withdrawn that admission and thereby create a suspecion in the mind of the jury. After all these faults of omission and commission committed by Farrer, I think, my readers will agree with me in thinking that, the compliment given by the Judges to him, was a tender stroke of policy to win him over to the side of the court and thereby slacken his sympathy for his client.

Mr. Farrer stated in the defence of the prisoner as follows.

"That, first, he could call witnesses present at the time "when Bullaky Dass executed the bond; that two witness-"es to the bond, now dead, were living when this transac-"tion came to the knowledge of Mohon Prosad; that he "would produce letters in Bullaky Das's handwriting

"admitting the bond, and the circumstances of the Jewels,
"and an account signed by Mohon Prosad and Padma
"Mohon Dass, in the presence of Ganga Bissen in which
"the sum contained in the bond included as also a
"paper in the handwriting of Bullaky Dass, in which
"the particulars of the transactions are stated; and that
"entries were made of the same in the books that were
"lost, and letters of correspondence between Bullaky Dass
"and Moharaja Nundakumar, in which this transaction
"was mentioned."

I really do not understand why the widely known dispute between Nundakumar and Hastings was not mentioned in the defence? Why Mahomed Camal's connection with the previous prosecutions was not severely commented upon? Why Hastings was not cited as a witness and asked whether he prosecuted Nundakumar and Fowke for conspiracy? Why the copies of accusations brought by Nundakumar against Hastings were not filed in this prosecution to show, that the prisoner had incured the enmity of the Governor General of India? Why evidence was not given to prove, that Mohon Prosad at this time had constant interviews with Warren Hastings? Any pleader of very ordinary experience would have attempted to prove all these facts and asked the Jury to draw that inference which those facts naturally suggested. I again say I really can not understand, why all those facts which could easily be proved were not even stated in the defence. Farrer's evidence before the impeachment committee displays a leaning towards Sir Elijah Impey and as a rising man of the bar, it was not at all improbable that in order to curry favour with the Judges he did not make any of those observations which he was sure would have given offence to them. Besides that he had to keep himself in the good graces of the Calcutta society. Under these circumstances I must say, Farrer ill deserved the compliment he received from the court. Sir James Stephen then at-

tempts to prove, that even Francis, General Clavering and Mr. Monson contemptously rejected the petition, which has been sent to them by Mr. Farrer and that another petition from Nundakumar was ordered to be burned by the common hangman as a libel, and all copies of it were to be destroyed. This was done at the motion of Francis and this petition was presented to the council by Clavering nine days after Nundakumar's execution; then Mr. Farrers's evidence before the impeachment committee against Impey is cited to show that only Radhachuran Nundakumar's son-in-law presented a petition to the Judges for the respite of Nundakumar, and that although two other petitions were prepared, one in the name of Sombhunath Roy, and the other in the name of the inhabitatants of Calcutta, Moorshedabad and other places; neither of them was adopted and carried into effect. From these facts Sir James Stephen presumes to say, that when Nundakumar was executed no one expressed even an issolated opinion in his favour, or shewed the very least disaproval of the conduct of the Judges or the smallest sympathy with Nundakumar. (Vol. I. Page. 230 and 249. also 232 - 33. & 250.)

If Sir James Stephen means to say, that Nundakumar died at the gallows quite unlamented by his countrymen. I need only draw his attention to the account of the execution quoted by him in Page. 238. Vol. I. of his own work.

Sir Elijah Impey with very grert plausibility took advantage of the minute, recorded by he council on the 16th May ordering, that the petition presented by Nunkumar containing insinuations aginst the Judges should be burnt publicly by the hand of the common hangman. This petition was entered in the books of the council on the 14th of August, and on the 16 th Hastings moved, that a copy of it should be sent to the Judges as it reflected on their characters. (See. Page. 92—93. Vol. II.) But Farncis, Monson and Clavering all opposed this motion; Francis said, that to send a copy to the Judges will give the paper much

more weight than it deserves, and added that the original should be burnt. The material part of this petition as contained in Vol. II. Page. 92. is as follows.

"For the fault of representing at this time a just fact "which for the interest of the king and the relief of the "people in a small degree made known, many English "Gentlemen have become my enemies, and having no "other means to conceal their own actions, deeming my des- "truction of the utmost expediency for themselves, revived "an old affair of Mohon Prosad's, which had formerly been "repeatedly found to be false; and the Governor, knowing "Mohon Prosad to be a notorious liar, turned him out of "his house, and themselves becoming his aiders and abet- "tors, and Lord Impey and other justices have tried me "by the English laws, which are contrary to the customs "of this country; in which there was never any such "administration of justice before, and taking the evidence "of my enemies in prove of my crime, have condemned me "to death. But by my death the king's justice will let the "actions of no person's remained concealed; and now that the "hour of death approaches I shall not for the sake of "this World be regardless of the next, but represent the "truth to the gentlemen of the council."

"The forgery of the bond of which I am accused never "proceeded from me* If I am unjustly put to death, I will with "my family demand justice in the next life. They put me "to death out of enmity, and from partiality to the gentlemen "who have betrayed their trust; and in this case the thread of "life being cut, I in my last moment again request that you "gentlemen will write my case, particularly to the just king "of England."

This petition was presented to Clavering on the 4th of august, the day before the execution of Nundakumar, and he produced it before the members of the council on the 11th

* Sir James Stephen takes this as an admission of forgery.

of August, Sir E. Impey with great plausibility argued that the conduct of Francis and other members of the Council clearly proved, that at the time when the events were recent and notorious Francis supported by other members described the petition as a libel, fit to be burned by the common hangman containing the very charge of which he (Francis) at the time of his impeachment approved; and was presumeably the principle instigator.

It is really a matter of wonder, how the members of Council could record a minute describing the petition as a libel fit to be burned &c, in the face of the minutes recorded by them on the 16th May, September 15th and November 21st. (See. Vol. I. Page. 101. and 251.) In these minutes the majority of the Council vehemently protested against the conduct of the Judges and the Governor General.

The minute of the 16th. May will show how ardently the majority of the Council had espoused the cause of Nundakumar. (See. Vol. I. Page. 101—3.) The minute of the 16th. May is given below.

"The prosecutions lately instituted against the Raja Nundaku-
"mar are attended with circumstances that deserve the attention
"of the court of Directors. If it be observed that he is the prin-
"cipal evidence against the Governor General, the measures taken
"to compass his destruction may be easily accounted for. The
"first prosecution was for a conspiracy formed by him in con-
"junction with Mr. Joseph Fowke, Mr. Francis Fowke, and
"others, to force a man called Cammaluddin Khan to write a
"petition against the Governor General, Mr. Barwell, Mr.
"Vansittart, the Roy Royan, and Cantoo Baboo, the Gover-
"nor General's Banyan. After a long and strict examina-
"tion before the Judges, Mr. Francis Fowke was discharged,
"Mr. Barwell, the Roy Royan, and Cantoo Baboo declined
"prosecuting. At last the Raja and Mr. Fowke were
"obliged to give bail, to appear at the suit of the Governor and
"Mr. Vansittart only. The truth is, as we have reason to be-

"lieve on the above circumstances, and on the faith of Mr. Fowke, "that there never existed such a paper as has been sworn to; and "that every particular said to be contained in it is an imposi- "tion invented by Cammaluddin Khan, because Mr. Fowke "and Nundakumar had refused to deliver to us three other "petitions which he had written, two of them against the Dewan "of the Calcutta Committee, whom we have since dismissed, and "one against Mr. Archdekin, a salt agent. This attempt to "discredit the evidence of the Raja not answering the purpose "it was intended for, he was, a few days after again taken up, on "a charge of forgery, and committed to the common gaol. The "Raja is not only a man of the first rank in the country, but a "Brahmin of a very high caste, and, according to the tenets of his "religion, entertains an opinion that he would lose his caste, or "suffer an indelible stain, were he to eat where he cannot perform "his ablutions. He desired only, that, since they had thought pro- "per to dishonour him in the eyes of all India, and contaminate "him by such an unfamous confinement, they would at least "permit a tent to to be pitched without the circuit of the "prison, or suffer him to be led every day to the side of "the Ganges, to perform his usual ablutions and say his prayers. "This request was denied him, though the consequence of it "was generally known and expected. He remained eighty-six "hours without taking any sustenance whatever, or drinking "any water.

"Representations were made repeatedly to the judges who "contended themselves with taking the opinion of Pandits, "provided and instructed by the Roy Royan. Even these men, "however, were obliged to declare that, if the Raja eat in the "place where he was confined, he must perform various penan- "ces before he could be absolved. The old man did not think "life worth preserving on these terms. At last the Judges were, "obliged to give way, and permitted a tent to be pitched "for him, where he performed his ablutions. As for ourselves, "though we may have strong reason to beleive him innocent

"of the charges brought against him, we shall not urge an "opinion in his favour, which would be useless to him and "might be charged with partiality. If he be subject to the "Jurisdiction of the Court, we do not doubt that, not-withstan- "ding the power and influence of his persecutors, an English "Jury will give him a fair trial." But alas! the expectation of the members of the Council were not realized and the power and influence of Nundakumar's persecutors, prevailed over the sense of Justice of an English Jury. I think the members of the Council were led to form this expectation on account of the verdict of not guilty given by the Jury in the conspiracy case; but as they were fresh from England and their opinions and views were not contaminated by the filthy atmosphere of Calcutta, they overlooked the fact that in the previous trial for conspiracy, Nundakumar had Josseph and Francis Fowkes as his fellow prisoners, so however partial the Jury may have been towards the Governor General, they did not on account of the public opinion then prevailing among the Anglo-Indian, venture to convict their own countrymen on insufficient evidence; so Nundakumar also received the benefit of that verdict of acquittal. "রাজেন্দ্র সঙ্গমে দীন যথা যায় দূর তীর্থ দরশনে" Now to come back to the points under discussion, I give below other two minutes of the Council to show, that even after the execution of Nundakumar the members, did not give him up, and expressed as strong an opinion about his innocence as before. The minutes of the 15th September and 20 th November are given below. (Vol. I. Page. 251—52.)

"After the death of Nundakumar, the Governor "I believe is well assured that no man who regards his "own safety will venture to stand forth as his accuser. "On a subject of this delicate nature it becomes us to leave "every honest man to his reflections. It ought to be "made known, however, to the English nation, that the "forgery of which the Raja was accused must have been com- "mitted several years; that in the interim he had been pro-

"tected and employed by Mr. Hastings; that his son was ap-
"pointed to one of the first offices in the Nobab's house-hold
"with a salary of a Lac of Rupees; that the accusation, which
"ended in his destruction, was not produced till he came
"forward and brought a specific charge against the Governor
"General of corruption in his office." In a minute of Novem-
"ber 21st the same person says, "It seems probable such
"embezzlements may have been universally practised. In
"the present circumstances it will be difficult, if not imprac-
"ticable, to obtain direct proof of the facts. The terror im-
"pressed on the minds of the natives by the execution of
"Moharaja Nundakumar is not to be effaced, for though he
"suffered for the crime of forgery, yet the natives conceive
"he was executed for having dared to prefer complaints
"against the Governor General. This idea however destitute
"of foundation, is prevalent among the natives, and will natura-
"lly deter them from making discoveries which may be
"attended with the same fatal consequences to themselves.
"Punishment is ussually intended as an example to prevent
"the commission of crimes; in this instance we fear it has
"served to prevent the discovery of them."

Francis attempted to give an explanation of this contradictory conduct but the more he wanted to make the matter clear the more he committed absurdities, I quite agree with Sir James Stephen, that the explanation was a miserable one; but yet I can not believe that the majority of the council had no sympathy at that time with Nundakumar. The minutes speak for themselves. In order to reconcile the contradictory conduct of the members we must enter into the field of conjecture. Francis, Clavring and Monson were mortals and as such subject to all the infirmities of human nature; if the public would accept them as such, then I think I can quite safely take the liberty to think that they did not make themselves enemies of Warren Hastings as philanthropists only, for the purpose of rendering good to India; they must have seen that Warren Hastings and his

friends were making money by all means possible, without any fear of punishment; and they being almost equal in power could neither prevent the plunder nor share in it. If we once admit this to be the cause of the enmity, reconciliation between the parties does not become improbable. My humble opinion on the subject is, that after Nundakumar was condemned to death Hastings must have propitiated his enemies and during the continuance of his friendship, induced the members to record the minute, of which Impey took so much advantage in his defence; and this is what betrayed them into conduct, which to say the least was very weak. These contradictory minutes admit of no other explanation than that I have given above. It was very natural that Warren Hastings not only to protect himself from the exposure, but also with the higher motive of putting a stop to this scandalous dispute which might have given rise to an effort among the natives to revive, the then not entirely extinguished Mahamedan Rule in India; had tried his best to win over the members to his side; and thereby he succeeded in gaining their friendship for a short time. Other-wise we do not find any reason how the members after recording the minute of the 16th May could change their opinion on the 16th August. Nothing transpired during this interval which could possibly have altered their opinion so completely; and then again, the minutes of the 16th May, September 15th and November 21st and the whole conduct of the members throughout clearly show, that the minute of the 16th August was the result of an unholy combination.

Francis in his explanation of this contradictory conduct went to the extent of saying, that out of fear he and his friends recorded the minute of the said 16th August. He observed. "With "a very few exceptions, we three in effect stood alone against the "combined power of two members of the Council; one of whom "was the Governor-General, against the Supreme Court of Judi- "cature, against the Board of Trade, and against the united animo- "sity and clamour of the whole settlement. If in that state and

temper of the times, General Clavering had been indicted for a libel on the Supreme Court, whose powers were in effect to us, "undefined, unlimited, and subject to no control, I can not positively affirm what would have been the consequence, but I am "positively sure that no efforts would have been spared, no "methods unattempted to harrass and distress him, and if "possible accomplish his ruin. We had no legal learning, we "had no legal advice. You may speculate coolly and wisely upon "our conduct but you will not determine equitably if you do "not endeavour to place yourself exactly in our situation' "At all events, whether we did right or wrong, we certainly did "not do that of which we are accused. We never said, that the "contents of Nundakumar's petition were not true." (Vol. II. Page 106. but read from 105.)

Although it is improbable, that fear alone could have induced Francis and his friends to record the minute of the 16th August, which rendered them to appear as idiots, before the impeachment committee; but it seems very probable that they must have been induced by fear and flattery combined together, to record the said minute. I think when the members were in the situation as described by Francis, Warren Hastings must have called on them and pointed out the danger of quarrelling between themselves, who were the heads of the administration, he may have told them that it was only eighteen years that the battle of Plassy was fought; the natives of India still looked upon the Emperor of Delhi as their *de juri* sovereign and Nawab of Mursidabad as their Viceroy. If we now quarrel among ourselves, for the purpose of exposing and detecting our own faults and crimes. India itself may be snatched away from our hands. These salutary advices coupled with the offer of some substantial benefit may have very easily induced the members to record the minute of the 16th August, 1775. (Vol. II. Page. 90-94.)

Otherwise we cannot account for this contradictory conduct of the members, especially of Clavering which was ex-

tremely reprehensible; he received the petition on the 4th of August, if at that time he was convinced about the guilt of Nundakumar, why did he not immediately return it declining to interfere in the matter; he submitted the petition before the council nine days after the execution of Nundakumar and allowed the unfortunate man to die at the gallows with the firm belief that General Clavering, Mr. Francis and Mr. Monson were his best friends; they could not have behaved thus without being dishonest and puppets in the hands of Hastings. Their Minutes and their conduct all through, and the encouragement they gave Nundakumar to bring forth accusations against Hastings clearly go to show, that they sincerely believed in the innocence of Nundakumar, and therefore I think the minute of the 16th August was recorded by some cunning device of Hastings to nutralize the effects of the previous minutes, as well as the accusations of Nundakumar. And as soon as he succeeded in getting it, and the excitement caused in consequence of the execution of Nundakumar, appeared to be abating, he threw off the garb of friendship, and appeared in his natural complexion again with a renewed vigor of mind and body. Hastings was not a man to submit to any one else, specially to those who gave him offence; and to whom he was by pressure of circumstances compelled to submit, hence we see the friendship between the members and Hastings was of such a short duration.

The argument of Sir James Stephen, that the members of the council had nothing to fear from the Supreme Court is incorrect; the said court could take cognizance of a charge of felony or treason against them. (see Vol. II. Page. 107. F. N.) Could not another Mohon Prosad spring up and charge them with offences cognizable by the Supreme Court?

Now I have to account, why no one else excepting Radha churan, the son-in-law of Nundakumar, presented a petition for his respite; it will be seen from the accusation

of Nundakumar against Hastings as well as from his last petition, that he (Nundakumar) did not only accuse Hastings of corruption, but attempted to expose the whole system of Revenue administration, by which the senior servants of the Company received illegal profits under various garbs and devices. Most of them had Benamé farms and the attempt to expose all these scandles not only excited the animosity of the officials themselves, but also of all the influential natives, who acted for those officials as Binamidars, add to this the terror impressed on the minds of the natives, by the conviction of Moharajah Nundakumar of a crime of which, if he was at all guilty, was condoned and acquisced in by the party against whom it was committed; and this will clearly account for the absence of a numerously signed petition.

If the members of the council could have been induced to record a minute against their belief and will, how easy it was to prevent the timid natives of Bengal from submitting a memorial for the respite of Nundakumar; who like the members had to stand against the combined animosity and wrath of the whole settlement, including the Governor General, Board of Trade, and the Supreme Court.

I have already pointed out, that the prosecution was supported by very weak evidence, and the circumstances under which it arose rendered the theory, of the prosecution very improbable. It will be seen from the essay of Mr. Beveridge that a long standing enmity existed between Nundakumar and Hastings; (Calcutta Review April 1870 Page. 277) it will also be seen from the accusations brought forth by Nundakumar against Hastings, that several other influential officials were also charged with corruption; and so all the non-officials both European and native of Calcutta and of other principal places, who used to share in the plunder of these officials, naturally became indignant against Nundakumar for his bold attempt to expose these scandles. All these facts speak for themselvs, and account also as to the rea-

son; why the Judges and the Jury were so much biassed against Nundakumar, throughout the whole trial. If the combined indignation of the Europeans in India in the 19th Century, can easily compell a Governor General and the majority of his Council to submit to them in a matter, wherein only one of the sentimental privileges of Europeans are touched; it can easily be conceived what their combined effort could do in 1775; when the Europeans in India were looked upon as the members of one family.

Sir James Stephen often brings forth the argument, that no direct evidence can be adduced to prove, that Impey was acting under the instigation of Warren Hastings, or that Hastings was the real prosecutor in the case. I need scarcely point out that any sane man cannot expect direct evidence in a conspiracy like this, and so Macaulay in discussing this point with his characteristic wit observed that "every one but an idiot or a biographer believed, that Hastings was the real mover in the prosecution."

This conspiracy might have been formed without a word being spoken directly on the point, and both the Judges and the Jury might have been prepared by Hastings to believe every thing against Nundakumar as gospel truth. In our time, we can point out cases wherein natives and Europeans alike have been nearly ruined by bringing accusations against officials in power, the fact that Hastings did not take any active part in the prosecution against Nundakumar, proves nothing in his favour, if he had an atom of sense left in him, he would not have done so; and this much he admitted in his evidence in the conspiracy case, that he was always on his guard, and he carefully avoided every circumstance, which might appear to be an interference in that prosecution.

There was no necessity, that Hastings should actively participate in the prosecution, by giving instructions to the counsels, and getting evidence against Nundakumar, for all these works, Mohon Prosad was quite up to the mark. The principal

part of the business, that is to influence the Judges and the Jury, was left to Hastings, and this he might have done in hundred different ways.

Sir Elijah Impey, on hearing that, Nundakumar was prosecuting his friend in his own council, for corruption and bribery, might have made up his mind to help him without any special request from him for that purpose, and all other judges and members of the jury may have become indignant against Nundakumar for his audacity for bringing charges against the celestial persons of Englishmen in India. It was a duty of the highest concern to all Englishmen not to allow the natives to know, that there was any superior authority over them in England, and how they could achieve this, without putting down the first native who ventured to raise his head against them.

Now the question arises, whether Mohun Prosad in carrying out the prosecution, was actually instigated by Hastings to bring this charge of forgery against Nundakumar; or he was influenced in his own mind by the events which were then passing in Calcutta. In my opinion this fact does not at all affect the question whether, Hastings influenced the judges or not, for he could do so without allowing Mohon prosad to know any thing about the part he was taking. Sir James Stephen admits that Mohon Prosad was influenced by the circumstances which were then passing in Calcutta, but do not those circumstances justify us to go a step further, ? Moharajah Nundakumar was a very influential man, and can it not be reasonably inferred, that without some direct, or indirect, hint about the support of a man of higher position, Mohon Prosad could not have ventured, to institute this criminal case ? Otherwise why he did not institute this case before ; the fact that a civil case was altogether abandoned, and a criminal proceedings hastily instituted, as soon as the new Supreme court arrived in India headed by Hastings, friend Sir E. Impey, is very significant.

Nundakumar appeared before the council to charge Hastings, March 13th, and he was committed for trial on the charge

of forgery, May 6th, only about eight weeks afterwards. But Sir James Stephens in his zeal to defend Impey and Hastings considers, that the co-incidence in point of time between the accusation of Hastings by Nundakumar and that of Nundakumar by Mohon Prosad, was by no means close ! ! ! Perhaps in the opinion of Sir James Stephens an interval of about eight weeks was quite sufficient for Hastings to forget and forgive, the past wrongs. Mohun Prosad or his clients could not possibly have derived any benefit by the confiscation of Nundakumar's property by Government.

Mohon Prosad was not a very rich man, and could get no earthly benifit by hanging Nundakumar, if Mohon Prosad was the sole and independent prosecutor in the case, could not Maharajah Nundakumar gain him and the whole batch of the principal witnesses to his side by paying one half of his fortune to them which " amounted to fifty two Lacs in money and full in as much more in other property " (See. Vol. I. Page. 265.)

Though circumstances speak otherwise yet for the sake of the dead persons concerned, I am inclined to believe that neither Hastings, nor Sir. E. Impey, did think of murdering Nundakumar when the prosecution was first started. Sir. E. Impey, with his colleagues and the Jury seem to have been prepared to convict Nundakumar from the very begining of the trial, and if Nundakumar and the members of the council had not taken a defiant attitude against the court, I think Sir. E. Impey would have commuted the sentence to some other lenient punishment as pointed out by Sir James Stephen. (Vol. II. 68.)

Sir. E. Impey admits this to have been his motive for not showing mercy to Nundakumar. (See. Vol. I. Page. 255-56.) Whether Sir. E. Impey did bonafide believe Nundakumar to be guilty or not, can not be ascertained now ; but this much I can assert that he could not have possibly believed, that the evidence was legally and morally sufficient for conviction, and even if he was morally convinced about the guilt of Nunda-

kumar, yet a consciousness must have existed in his mind, that in convicting Nundakumar he was rendering a service to his friend Warren Hastings. Sir. E. Impey in a letter addressed to Dunning, Dated march 1780, when writing about W. Hastings says :—" The power which is exerted against me would not have existed in the hands in which it is if I had not helped to keep it there " &c. See also another letter of W. Hastings to a friend in 1780 ; the language of both the letters is very significant. (Vol. II. Page. 44.)

The argument of Sir. James Stephen, that Nundakumar was not the only witness against Hastings, and that he had already told all he knew if not great deal more ; and therefore there was no necessity to take away his life is extremely falacious. (Vol. I. 250, Vol. II. 68.) Nundakumar might have not been the only witness in the case ; but it cannot be denied, that he was the principal witness against Hastings, on whose exertion, the successful termination of the prosecution did entirely depend. Besides that, who would after the execution of Nundakumar, have ventured to appear against Hastings. As to the argument that Nundakumar had told all that he knew, I need only point out the petiton of the 4th of August 1775, in which Nundakumar distinctly stated that " for the fault of representing the existing abuses and corruption in a small degree many English gentlemen have become his enemies." (Vol. II. Page. 92.)

My opinion that Impey and Hastings did not from the beginning intend to take away the life of Nundakumar is not based upon any substantial fact. But the kind of education and training both of them received, rendered it improbable that one being abetted by the other should have sat down in a court of justice with the determination of killing a fellow creature. Human nature revolts at the idea, and I cannot impute such a heinous crime to these two dead men however black they were. This prosecution no doubt received great deal of encouragement from the Judges with the view of showing to the

natives, that it was not a play thing to bring any accusation against any Englishman in India, and as I have already pointed out, Nundakumar's intention was to reform the whole administration of Bengal, so all influential men whether native or European, who profited by the abuse of the administration naturally became indignant against him, and a kind of masonic feelings may have sprung up in their minds to chastise the common enemy ; but it does not necessarily follow that, that chastisement was intended to be carried to the extent of taking away the life of the man. But when it was seen that Nundakumar in anticipation of receiving protection from the members of the council, adopted a defiant attitude towards the court by sending petitions and letters to the council, which were readily listened to, and accepted by the members ; it was no wonder that under the excitement of the time after the conviction, Sir. E. Impey and other Judges satisfied their conscience on the assumed belief, that the responsibility of the verdict rested with the jury ; and they as Judges in declining to show mercy to the convict, rendered them open to the charge of a passive act of cruelty only, and under the excitement of the party feeling they must have lost sight of the fact that neither the convict nor the prosecution was an ordinary one. I do not for a moment contend like Sir, James Stephen ; that no blame can be imputed to Impey for hanging Nundakumar, what I want to make out is, that Impey in convicting Nundakumar did not first think of taking away his life; because the object of his friend might have been easily gained by adopting a different course as pointed out by Sir James Stephen. (See Vol. II. Page. 68.) But the cirmustances afterwords induced him to adopt what in his opinion was a passive measure ; and therefore allowed the law to take its own course. Sir. E. Impey in his letter to Governor Jhonstone after making solemn appeal to God states that " all along it was his intention to show mercy to that unhappy man " and I believe in those words. I think Sir. E. Impey simply wanted to show little

Meherpani to Warran Hastings by securing the conviction of Nundakumar, and thereby create an awe among the natives; but when the time for preventing the execution of the sentence arrived; drift of circumstances induced him to adopt a passive measure.

Now I proceed to sum up my view of this sensational case. First:—That Moharajah Nundakumar was innocent of forgery, but he was guilty of bribery or for taking money for rendering service to Bullaky Dass or to his representative. The amount of the bond was Chouth(¼) for services of Nundakumar.

Second:—That there would not have been the Civil suit if Nundakumar had given to Mohon Prosad one-fourth of the money from his own gain; and that Mohon Prosad would not have ventured to bring this prosecution; but for some support from higher quarters.

Third:—That either at the express request of Hastings or on account of some masonic feelings, the Judges and the Jury convicted Nundakumar in order to render service to Warren Hastings and other officials.

Forth:— That but for this party-feelings, Nundakumar would never, have been committed for trial after so long a time from the payment of the bond; that fact itself was sufficient to reject the complaint at once.

Fifth:—That Nandakumar's accusations against Hastings was looked upon as an unpardonable crime by all officials and non-officials of Calcutta.

Sixth:—That both the Judges and the Jury displayed extreme inimical feelings towards Nundakumar, and they convicted him on evidence which they could not have possibly believed to be sufficient. Nundakumar lost his life as a victim of circumstances and partyfeelings.

Seventh:—That looking to all the circumstances of the case, the court ought to have granted a respite to Nundakumar at any rate till the opinion of the higher authority in England was known.

Eighth:—That Nundakumar was hanged by mere technical

rules of doubtful application and extent, and that the punishment provided by the English law was extremely barbarous and repugnant to the ideas of natural Justice.

Sir James Stephen after exhausting his stock of arguments adopts the line of defence, so often adopted by pleaders in bad criminal cases; the art of this line of defence consists in attributing more wisdom to the accused.

Sir James Stephen contends, that if Hastings interfered in the prosecution, he incurred a tremendous risk of utter ruin for no reason at all. Nundakumar had made his accusation, and named the persons who could support it. Hastings on the other hand had prosecuted Nundakumar for conspiracy and procured his committal for trial; why in such circumstances should Hastings embark on a second prosecution which would embarass the first? and which was in itself speculative and dangerous in the highest degree. I need for the purpose of refuting these arguments, only observe, that if a man bent upon comitting a crime could exercise such calm and disspassionate reasonings as expected by Sir James Stephen; I can venture to say then the numbers of crime would have been decreased by ninety per cent. But in this case the second prosecution was essentially necessary, because in the first place Hastings could not have expected, that in the prosecution for conspiracy the two Fowkes being also accused, an English Jury would convict them on the evidence of Cammaluddin, and they could not have convicted Nundakumar without convicting the Fowkes. The Judges and the Jury must have feared to convict two English gentlemen on such untrustworthy evidence; but in the second prosecution against Nundakumar alone, no such fear existed. In the second place Hastings in his excited imagination may have thought, that as apparently he had no connection with this prosecution it could be safely carried on without his name being mixed up with it.

I really do not understand on what authority Sir James Stephen says, that Nundakumar was all but acquitted in the trial, but for his want of judgement combined with the effect

produced upon the Jury by the mass of perjury put forward in his defence.

But we find from what the Judges had told to Farrer, that from the very beginning they were prepared to believe the story of the prosecution, which they characterized as the plain tale told by the prosecutor. (Vol. I. Page. 174--75.)

Perhaps it will be admitted by every one that when Nunda Kumar was tried for forgery, most unreasonable technical objections were allowed to prevail in criminal cases; I therefore again express my surprise why the following objections, some of which may stand good even now under Sir J. Stephen's Indian criminal Procedure Code, were not urged in the case.

1st. It has been in a manner admitted by Sir Elijah Impey, that there was no evidence to prove the actual forgery, (Vol. I. Page. 147—48.) and that the evidence applied to support the charge of publishing forged document with intent to defraud Ganga Bissen and Hingoo Lall; at any rate Ganga Bissen the surviving executor. If there was no evidence to support the charge that the bond was forged by Nunda Kumar, how the charge for publishing the same bond knowing it to be forged could stand good! How he could know it.? In fact excepting the two confessions imputed to Nunda Kumar by Cammaluddin and Mohon Prosad, there was not an iota of evidence to prove the actual forgery. If the document had been declared a forgery by the civil court, the criminal court might say that although there was no evidence by whom the document was forged; but as it has been used and published by Nundakumar, he could be charged with publishing a forged document. In this case the document was filed in the Mayors court, and that court, did not grant any sanction to the prosecution, and without such sanction the prosecution should not have been allowed to proceed.

Suppose A had instituted a suit in the Mayors court to set aside the adoption of B and deposed that there was no power of adoption, could the Supreme Court prosecute A for perjury without waiting for the final decision of the case? But

Nundakumar's case was stonger, because he did not file the bond in the Mayors Court, the bond was filed there by Padmamohon Dass; how could Nundakumar then be charged with publishing a forged document. (See. Vol. I. Page. 111.) Publicity to the bond was given by Padmamohon Dass and not by Nundakumar, and this was the publishing complained of. (See. Vol. I. Page. III.)

ERRATA.

In the Preface, page iii,		lines 9 and 25	for "deliberately"	read "deliberately."	
Same page,			for "Geoffroi de"	read "de Geoffroi."	
Page	v	line 22	for "Simplicity"	" Simplicity.	
"	15	" 31	for "he"	" the	
"	35	" 26	for "6th May"	" 6th August.	
"	39	" 19	for "Anglo Indian"	" Anglo Indians	